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IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1979

NUMBER A-658

DONALD G. DAVIS,
Petitioner

-vs-

INTERNATIONAL UNION OF CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN AND HELPERS, LOCAL 135; LORAN W. ROBBINS, PRESIDENT OF INTERNATIONAL UNION OF CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN AND HELPERS, LOCAL 135; and LORAN W. ROBBINS, INDIVIDUALLY,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Donald G. Davis, the petitioner herein, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the

Seventh Circuit entered in the above-entitled cause on the 28th day of November, 1979.

OPINIONS BELOW

The opinion of the United States District Court, for the Southern District of Indiana is unreported, and is printed in Appendix A and B, infra, page (Ai). The judgment of the United States Court of Appeals for the Seventh Circuit is unreported, and is printed in Appendix C hereto, infra, page (Ci).

JURISDICTION

The judgment of the United States District Court, Southern District of Indiana, was entered on the 11th day of January, 1979 (Appendix A, infra, page (i)). A timely motion to alter or amend judgment was filed on the 18th

day of January, 1979, with the Clerk of the United States District Court, Southern District of Indiana. (Appendix A, infra, page (Ai)). That a timely Motion for Relief from Judgment and from New Trial was filed with the United States District Court, Southern District of Indiana, on the 18th day of January, 1979. (Appendix A, infra, page (Ai)). That a timely Motion to Reconsider was filed in the United States District Court, Southern District of Indiana, on the 18th day of January, 1979. (Appendix A, infra, page (Ai)). That thereafter, plaintiff's Memorandum in Support of the Motion to Reconsider was filed with the United States District Court, Southern District of Indiana, on the 8th day of March, 1979. (Appendix A, infra, page (Ai)). That all of said motions

were denied by the United States District Court, Southern District of Indiana, on the 11th day of April, 1979. (Appendix A, infra, page (Ai)). That thereafter, all prerequisites to appeal to the United States Court of Appeals for the Seventh Circuit were met and complied with, and this matter taken thereto, and the judgment of the United States Court of Appeals for the Seventh Circuit was entered by unpublished curiam order on the 28th day of November, 1979. (Appendix A, infra, page (Ai)). That jurisdiction of the Supreme Court is invoked under 28 U. S. Code, Section 1254, wherein it is provided:

> "Section 1254. COURTS OF APPEALS; CERTIORARI; APPEAL; CERTIFIED QUESTIONS.
>
> "Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:

> (1) By Writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
>
> . . ."

QUESTIONS PRESENTED

The questions presented in petitioner's Petition for Writ of Certiorari are as follows:

A. Whether the petitioner was a "member" of defendant local union under provisions of the Labor Management Reporting and Disclosure Act, more particularly, 29 U. S. Code, Section 402 (o).

B. Whether "formal acceptance" can in itself be a prerequisite or requirement for membership as relating to 29 U. S. Code, Section 402 (o).

C. Whether the purposes and intent of Congress in the enactment

of the Labor Management Reporting and Disclosure Act as set forth in 29 U. S. Code, Section 401 is served by the findings of the United States District Court, Southern District of Indiana, and the affirming of that decision by the United States Court of Appeals for the Seventh Circuit. Whether the petitioner's compliance with all normal requirements of membership with said union was sufficient to entitle him to standing in membership rights under the Landrum-Griffin Act pursuant to Section 29 U. S. Code, Section 402 (o); and whether the Trial Court and Appellate Court can go beyond the bylaws and constitution of said international union or its local and look to, and rely upon common custom, practice and procedure to determine the requirements

for membership in order to confer rights under the Landrum-Griffin Act, and secure those rights pursuant to 29 U. S. Code, Section 402 (o).

D. Whether a class of individuals as set forth in the petitioner's Amended Complaint to the Court, that being persons who have run for elective office or attempted to run for elective office or impose incumbent candidates, is a "class" of persons sufficient to grant the Court jurisdiction under the provisions of 42 U. S. Code, Section 1985 and 42 U. S. Code, Section 1986.

E. Whether the question of membership qualifications being met, and requirements for membership being met under provisions of 29 U. S. Code, Section 402 (o) is a question of fact or a question of law. Whether in fact,

the Trial Court may consider past practice, conduct and custom when determining whether the "requirements" under Section 402 (o) have been met, and whether the Court has jurisdiction to grant judgment under the provisions of Rule 12B6, of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction, or whether the questions as to whether requirements of membership have been met, based upon past practice, custom and procedure is a question of fact, therefore rendering a Motion to Dismiss under 12B6 for lack of subject matter jurisdiction inappropriate.

STATUTE INVOLVED

"Section 402. DECLARATION OF FINDINGS, PURPOSES, AND POLICY.

"(a) The Congress finds that, in the public interest, it continues to be the responsibility of

the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.

"(b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

"(c) The Congress, therefore, further finds and declares that the enactment of this Act is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended (29 U.S.C.S. §§ 141-144, 151-158, 159-167, 171-183, 185-187, 557), and the Railway Labor Act, as amended (45 U.S.C.S. §§ 151-163, 181-188), and have the tendency or necessary effect of burdening or obstructing commerce by (1) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (2) occurring in the current of commerce; (3) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods into or from the channels of commerce, or the prices of such materials or goods in commerce; or (4) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing into or from the channels of commerce.
(Sept. 14, 1959, P. L. 86-257 § 2, 73 Stat. 519.)

"Section 402. DEFINITIONS.

"For the purposes of titles I, II, III, IV, V (except section 505),

and VI of this Act (29 U.S.C.S. §§ 411-415, 431-441, 461-466, 481-483, 501-504, 521-531) -

"(a) 'Commerce' means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

"(b) 'State' includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 133-1343).

"(c) 'Industry affecting commerce' means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry 'affecting commerce' within the meaning of the Labor Management Relations Act, 1947, as amended (see 29 U.S.C.S. § 142(1)), or the Railway Labor Act, as amended (45 U.S.C.S. §§ 151-163, 181-188).

"(d) 'Person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives,

mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

"(e) 'Employer' means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

"(f) 'Employee' means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.

"(g) 'Labor dispute' includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

"(h) 'Trusteeship' means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.

"(i) 'Labor organization' means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

"(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it -

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended (29 U.S.C.S. §§ 151-158, 159-168), or the Railway Labor Act, as amended (45 U.S.C.S. §§ 151-163, 181-188); or
(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or
(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or
(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international

labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceeding paragraphs of this subsection, other than a State or local central body.

"(k) 'Secret ballot' means the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed.

"(l) 'Trust in which a labor organization is interested' means a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organizations or their beneficiaries.

"(m) 'Labor relations consultant' means any person who, for compensation, advises or represents an employer, employer organization, or labor organization

concerning employee organizing, concerted activities, or collective bargaining activities.

"(n) 'Officer' means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.

"(o) 'Member' or 'member in good standing', when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

"(p) 'Secretary' means the Secretary of Labor.

"(q) 'Officer, agent, shop steward, or other representative,' when used with respect to a labor organiza tion, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority), but

does not include salaried non-supervisory professional staff, stenographic, and service personnel.

"(r) 'District court of the United States' means a United States district court and a United States court of any place subject to the jurisdiction of the United States. (Sept. 14, 1959, P. L. 86-257, § 3, 73 Stat. 520.)

"Section 1985. CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS.

"(1) Preventing officer from performing duty. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

"(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person or class of persons, to the equal protection of the laws;

"(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on

the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages,

occasioned by such injury or deprivation, against any one or more of the conspirators.
(R.S. § 1980.)

"Section 1986. ACTION FOR NEGLECT TO PREVENT CONSPIRACY.

"Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section (42 U.S.C.S. § 1985), are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action, and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no

widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.
(R.S. § 1981.)

"Rule 12. DEFENSES AND OBJECTIONS - WHEN AND HOW PRESENTED - BY PLEADING OR MOTION - MOTION FOR JUDGMENT ON PLEADINGS

"(a) When Presented. A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him, except when service is made under Rule 4(e) and a different time is prescribed in the order of court under the statute of the United States or in the statute or rule of court of the state. A party served with a pleading stating a crossclaim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within 60 days after the service upon the United States

attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

"(b) How Presented. Every defense in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall

be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

"(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all

parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

"(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

"(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

"(f) Motion to Strike. Upon motion made by a party before

responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

"(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

"(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances

described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.
(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.
(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

STATEMENT OF THE CASE

This action was commenced on the 26th day of October, 1978, by the filing of petitioner's Petition for Temporary Restraining Order and Preliminary and Permanent Injunction;

Motion for Temporary Restraining Order; and Complaint for Damages; Declaratory Relief; Injunction; and other legal and equitable relief. On or about the 7th day of November, 1978, your respondent (defendant-appellees below) filed a Consolidated Motion to Dismiss, Motion for Summary Judgment and Motion for Attorneys Fees. On or about the 11th day of January, 1979, the United States District Court, Southern District of Indiana, Indianapolis Division, dismissed this matter for lack of subject matter jurisdiction. On or about April 11, 1979, the United States District Court, Southern District of Indiana, Indianapolis Division, denied petitioner's (plaintiff-appellant below) Motion to Reconsider. Petitioner also filed

Request to File Amended Complaint, which was filed with the Court, the same being denied with their Motion to Reconsider.

Jurisdiction in the United States District Court, Southern District of Indiana, Indianapolis Division, was alleged under the following:

A. United States Constitution

1. First Amendment
2. Ninth Amendment
3. Fourteenth Amendment

B. Federal Statutory and Common Law

1. 42 U.S.C., Section 1983;
2. 42 U.S.C., Section 1985;
3. 42 U.S.C., Section 1986;
4. 29 U.S.C., Section 104 et seq.;
5. 29 U.S.C., Section 141 et seq.;
6. 29 U.S.C., Section 158;
7. 29 U.S.C., Section 187;
8. 29 U.S.C., Section 401, et seq.;
9. 29 U.S.C., Section 481.

Jurisdiction of this cause was rendened by virtue of Title 28 of the United States Code, Section 1343; Title 28 of the United States Code, Section 1331; and Title 28 of the United States Code, Section 1337. In addition, plaintiff alleged pendent jurisdiction of the Court to rectify claims of violation of the Constitution of the State of Indiana.

Petitioner (plaintiff-appellant) had been a member of Local 135, of the International Union of Chauffeurs, Teamsters, Warehousemen and Helpers, for a period of almost thirty (30) years, until his resignation from said local on or about the 27th day of May, 1977, in settlement of another case in the United States District Court. In September of 1978, petitioner

(plaintiff-appellant) went to the office of the respondent (defendant-appellee) union, proffered to them a signed and filled out application card, membership request, and cash in the sum of seven hundred dollars ($700.00) for dues, fees, and any and all assessments necessary in order to join said union. The person responsible for accepting such cards and membership dues at respondent union, informed the plaintiff that she could not accept "his" money, and that she had orders that petitioner was to see "Robbins" himself.

Throughout his long career and membership in Local 135, your petitioner (plaintiff-appellant) has been a worker, business agent, organizer, and held other various and

insundry positions within Local 135 and as such was uniquely familiar with the membership process. In addition, your plaintiff held such positions with the International Union and again was uniquely familiar with the membership process.

Petitioner's contention in this matter is that all that was required for membership in Local 135 was the presentment of the application card and your dues. Throughout his career in Local 135, this was all that had been required of membership. Affidavits were presented to the Court to that effect, and deposition was presented to the Court by former business agent as to past practice and procedure. It was even noted in affidavits, and through testimony in the deposition,

that many persons joined Local 135 by never appearing at the union hall, taking any oath, or in any other way or manner even talking to officers of the union. Business agents or stewards would appear at the loading docks, take five dollars ($5.00) per day from the workers until their dues were paid, and then return with a signed membership card. All past practice, custom and procedure of Local 135 indicates that all that was required for membership was the application, and the payment of dues. This Mr. Davis did. He was singled out to be rejected in his application and non-acceptance of monies.

The plaintiff brought this action alleging that Section 402(o) of

29 U. S. Code grants him the right to bring suit under the provisions of the Landrum-Griffin Act, and constitutes standing under that act to bring suit against the union for violation of rights. 29 U. S. Code, Section 402 (o) provides in essence that once someone has met all membership requirements for membership in the union or the local union, they are treated as members for purposes of the act. Petitioner contended that he had met all membership requirements in the local union. In addition, the appeal was taken on the basis that the Court did ~~not~~ grant such a dismissal in the absence of hearing evidence as to what was actually common practice, custom and procedure in the local union, and what were those requirements for

membership. The Court in this particular cause made no evidentiary finding, listened to no testimony, and in effect ruled that the past practice, custom and procedure of the local union had no application to actual membership requirements, but that membership requirements as found in the bylaws were controlling, even though the same were never used nor made part of the actual membership process.

REASONS FOR GRANTING WRIT

I.

CERTIORARI SHOULD BE GRANTED IN ORDER TO ESTABLISH A CONGRESSIONAL POLICY IN THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT, PARTICULARLY REFERRING TO 29 U.S. CODE, SECTION 402 (o).

The issue in this case is not simply whether Donald G. Davis met all

requirements for membership in the local union, and therefore was entitled to standing under provisions of the Labor Management Reporting and Disclosure Act, more particularly 29 U. S. Code, Section 402(o), but also at issue is the very purpose of such act, and the congressional enactment of this particular purpose of the act was set forth specifically as follows:

> "DECLARATION OF FINDINGS, PURPOSES, AND POLICY
>
> "(a) The Congress finds that, in the public interest, it continues to be the responsibility of the Federal government to protect an employee's rights to organize, choose their own representatives, bargain collectively, and otherwise engage in asserted activities for their mutual aid or protection; . . .
>
> "(b) The Congress further finds, from recent investigations in the labor anad management fields, that there have been a number of instances of breach of trust, corruption, disregard of the

rights of individual employees, and other failure to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interest of the employees and the public generally as they relate to the activities of labor organizations, employers, labor relation consultants, and their officers and representatives.

"(c) The Congress, therefore, further finds and declares that the enactment of this Act is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended (29 U.S.C. Section 141-144, 151-158, 159-167, 171-183, 185-187, 557) and the Railway Labor Act, as amended, (45 U.S.C. Section 151-163, 181-188) that have the tendency or necessary effect of burdening or obstructing commerce by (1) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (2) occurring in the current of commerce; (3) materially affecting restraining or controlling

the flow of raw materials or manufactured or processed goods into or from the channels of commerce, or the prices of such materials or goods in commerce; (4) causing diminuation of employment and wages in such volume as to substantially impair or disrupt the market for goods flowing into or from the channels of commerce." (Our emphasis)

It is clear from this congressional declaration of findings, purposes and policies that Congress intended the Federal government to take an active part to protect employees' right to organize, choose a representative, bargain collectively and otherwise engage in asserted activity for their aid or benefit. The Court further found that the enactment of the act was necessary to eliminate or prevent improper practices on the part of labor organizations and their officers.

One of the main purposes of the Labor Management Reporting and Disclosure Act was to insure full and active participation by the rank and file in the affairs of the union. See American Federation of Musicians v. Whittstein (1964), 371 U.S. 171, 13 L. Ed. 2nd 214, 85 S. Ct. 300. The purpose of the Labor Management Reporting and Disclosure Act has also been stated as to stop objectional conduct by union officers in positions of trust. Nelson v. Johnson (1962, D. C. Minn.), 212 F. Supp. 233, Aff'd (CA8 Minn.), 325 F. 2nd 646.

The plaintiff's Complaint, and all of the facts in this particular cause make it apparent that petitioner seeks only to maintain and preserve his rights as provided by the act, and his right to join said union,

and participate actively therein. The congressional policy and purpose of the act as stated in Section 401 is clearly in line with the appellant's Complaint wherein he seeks to protect the rights and privileges guaranteed him under the act and the constitution.

The Trial Court's ruling and the affirmation of such ruling by the United States Court of Appeals, Seventh Circuit, effectively denies the express purposes of the act.

In addition, Congress saw fit to specifically include, within the Landrum-Griffin Act, the provisions found in 29 U.S. Code, Section 402(o) wherein it is stated:

> "Member' or 'member in good standing' when used in reference to a labor organization, includes any person who has

> fulfilled the requirements for membership in such organization, and who has neither voluntarily withdrawn from membership, nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization."

As pointed out, Congress saw fit to include this provision within the Landrum-Griffin Act. The provisions, and the purpose behind the same is to afford those same rights and remedies to persons who have met requirements for membership in a particular local or labor organization, but are being denied the rights and privileges set forth under provisions of the Landrum-Griffin Act. This is exactly the case which was presented to the Court herein. The first issue the Court must determine, is whether Congress, through its

specifically including this provision in the Landrum-Griffin Act, intended the same to be enforced by the Courts, and to allow standing to those persons who have met the requirements for membership, but have been denied the rights and privileges guaranteed under the Act. The cases have previously held that where a person has fulfilled all of the requirements for membership actually prescribed by the labor organization, he is a member of said organization as defined by the act. See Hughes v. International Association of Bridge, Structural and Ornamental Iron Workers (1961, CA3 NJ) 287 F. 2nd 810, Cert. Den. 368 U.S. 829, 7 L. Ed. 2nd 32, 82 S. Ct. 51.

The Supreme Court's findings of the congressional purposes enacting

in this particular section of the Landrum-Griffin Act, can further lead the Court to the deciding of the more specific issues of this case as set forth below.

II.

CERTIORARI SHOULD BE GRANTED TO ESTABLISH PRECEDENCE AS TO WHETHER COURTS MUST CONSIDER PAST PRACTICE, CUSTOM AND USAGE IN DETERMINING WHETHER REQUIREMENTS FOR MEMBERSHIP HAVE BEEN MET UNDER PROVISIONS OF 29 U.S.C. SECTION 402(o)

In this particular cause, the United States District Court, Southern District of Indiana, Indianapolis Division, basically held that because all "formal" requirements of membership as set forth in the bylaws of the local union had not been met, your petitioner did not meet "requirements"of membership as set forth under Section 402(o) and therefore was not entitled to sue

under provisions of the Labor Management Reporting and Disclosure Act.

What the Court failed to consider was the past practice, custom and usage within the union for membership. The union contended that not only did application and filing fee have to be submitted, but also formal prerequisites of acceptance by the union must be met. This in itself forms an inescapable argument on behalf of the union, defeats the congressional purpose of Section 402 (o) and leaves the bereaved plaintiff with no cause of action.

In short, for formal acceptance to be required as a "requirement" for membership in the union, it means that even though all requirements have been met that a person can still not

sue under the act until he is formally accepted by the union. However, if he is formally accepted by the union, than Section 402 (o) is not needed, and hence surplusage in the act. Congres did not intend for this provision of the act to go unheeded, and not provide a remedy to any bereaved plaintiff. It is clear that if a person is formally accepted into the union, then he has standing to sue under other provisions of the Labor Management Reporting and Disclosure Act, and does not have to rely upon this specific provision which provides that even though he is not recognized as a formal member, he still maintains the right to sue if all "requirements" for membership have been met. Under this argument, if the formal acceptance is not granted,

then he has not met all "requirements" and is not entitled to sue. It is what has become known as "catch 22" predicament for a plaintiff.

In this particular cause, your petitioner submitted affidavits, depositions, and other matters to the Court to demonstrate the past practice of the union over a long period of years consisted in membership being granted only upon tender of dues, and the filling out of an application card. Affidavits and deposition demonstrated that most members never even appeared at the union hall, nor never tendered the cards or dues themselves, but such cards were signed on the dock when presented by a business agent, and dues were collected by the agent or union steward at the rate of five dollars ($5.00) per day, or five dollars

($5.00) per week until paid in full, then the union steward would return the card and the dues to the union hall, and return a union book or membership card to the member on the dock. There has never been any requirement of formal acceptance, vote or any other formal procedure for membership in the union. For the Court to fail to consider the past practice, custom and procedure of the union is reverseable error, and defeats the purposes of the act and all rights and remedies of the plaintiff.

The Trial Court was in error in not considering evidence concerning the past practice and custom of the local union regarding "requirements" for membership in said local. Had the Court considered this evidence, it would have become apparent that the petitioner

had met all requirements based upon this test. The Courts have been willing to accept "custom" of a business organization or establishment if such is reasonably regular and uniform. Petitioner was never given a chance to establish this in the above-captioned cause, and it was error for the Court not to consider the same. Such "custom" of a business organization or establishment has been held admissible regarding customary practices of the Immigration and Naturalization Service (United States v. Oddo, 314 F. 2nd 115 (2nd Circ. 1963), Cert. Den. 375 U.S. 833); Custom of inspecting trucks (Eaton v. Bass, 214 F. 2nd 896 (6th Cir. 1954); customary sterilization procedures and medical center (Russell v. Pitts, 105 GA. App. 147, 123 S. E. 2nd 708 (1961));

and cases cited 1 Wigmore, evidence, section 93, note; Dec. Dig. evidence key number 139.

It should also be noted that Federal Rules of Evidence, Rule 406 states:

"Rule 406. Habit; routine practice

> "Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of a person or organization on a particular occasion was in conformity of the habit or routine practice."

Rule 406 of the Federal Rules of Evidence, indicates that such evidence is admissible in a cause. The Court in this case must grant certiorari in order to determine whether past custom, practice and procedure is relevant,

and should be considered in determining whether all "requirements" of membership have been met under 29 U. S. Code, Section 402(o).

The United States District Court, Southern District of Indiana, Indianapolis Division, had it allowed evidence of past practice, custom and procedure regarding requirements of membership, and had it considered the same and held an evidentiary hearing, would have had no other choice based upon the facts of this case than to acknowledge that the petitioner did in fact meet all requirements of membership in the local union, and therefore was entitled to standing to sue under provisions of the Labor Management Reporting and Disclosure Act. The evidence submitted by way of affidavits,

and evidence submitted by way of affidavit attached to an Amended Complaint, and the deposition submitted to the Court established this affirmatively, with no opposing evidence.

III.

THE COURT SHOULD GRANT CERTIORARI TO DETERMINE WHETHER THE CLASS OF INDIVIDUALS AS SET FORTH IN THE PETITIONER'S COMPLAINT AND AMENDED COMPLAINT TO THE COURT, THAT BEING PERSONS WHO HAVE RUN FOR ELECTIVE OFFICE OR ATTEMPTED TO RUN FOR ELECTIVE OFFICE OR IMPOSE INCUMBENT CANDIDATES, IS A "CLASS" OF PERSONS SUFFICIENT TO GRANT THE COURT JURISDICTION UNDER PROVISIONS OF 42 U.S.C. SECTION 1985 AND 42 U.S.C SECTION 1986

The Court below dismissed the petitioner's claims founded upon the provisions of 42 U.S. Code, Section 1985 (3) and 42 U. S. Code, Section 1986 on the basis that the Complaint did not sufficiently allege an allegation that the petitioner was being

singled out as a member of some class of individuals for specific treatment by the respondent.

The Court should grant certiorari in order to determine whether the class of persons of which the petitioner was a member, that being persons who have run for elective office in Local 135, or imposed the incumbent candidates therein are a class sufficient to meet the qualifications of 42 U.S. Code, Section 1985 (3) and Section 1986.

The original purpose of 42 U.S. Code, Section 1985, when enacted, is to give a cause of action to individuals deprived of their federal rights by conspiracies of either public officials or private persons. See Huey v. Barloga (1967), D.C. Ill., 277 F. Supp. 864. Rights protectable under the provisions

of 42 U.S. Code, Section 1985 (3) are rights created by federal laws and rights owing their existence to the Federal government. This has all been alleged by the plaintiff. The third, and most important paragraph of 42 U.S. Code, Section 1985, that being Subsection 3, provides for the safeguarding of "the equal protection of the laws, or of equal privileges and immunities under the laws".

In this particular cause, the petitioner alleged that he had been treated differently then other persons who seek to become or became members of the defendant union. Throughout the Complaint, memorandums, affidavits and the deposition filed with the Court, it is shown conclusively that the common practice, custom and procedure

of Local 135, for years past and even through the present time, was that only two requirements were necessary in order to become a member of said union. This required the (1) filling out of an application card, and (2) tender of payment of all dues, fees and assessments. This the appellant complied with, but was discriminatorily and individually singled out and discriminated against because of his past history of opposing incumbent officers and running for elective office. As alleged in the Affidavit, the petitioner was told specifically that they could not accept his money, and that he would have to see the president of the union. At this time, your petitioner was told that he could not join the union although he had done specifically what other members of the

union had done. Many other persons have sought and received membership in this local union simply by meeting these two requirements. These affidavits were attached to the petitioner's Amended Complaint, submitted to the Court, and the deposition submitted to the Court verifies this. The union arbitrarily discriminated against the petitioner simply because of his views and beliefs in the operation of said union and his avowed purpose of running for elective office upon gaining membership. This treatment of the appellant, differently then anyone else who may apply for and receive membership in defendant union was disparate and discriminatory and in violation of the provisions of 42 U.S. Code, Section 1985 (3). As such,

the petitioner was a member of an arbitrarily discriminated against class, that being those persons who intended to run for elective office or impose incumbent officers.

The right to equal protection is a fundamental freedom, and the discrimination protectable under provisions of 42 U.S. Code, Section 1985 (3). The right to be free from a denial of equal protection and employment and business opportunities is also protectable under this subsection, as illustrated by the case where city officials intentionally discriminated against a Negro liquor license holder and revoked his license (Louis v. Grand Rapids (D. C. Mich. 1963) 222 F. Supp. 349, revd. on other grounds CA6) 356 F. 2nd 276); and the 2nd Circuit Court of

Appeals also held that an architect stated the cause of action under this subsection when he alleged the conspiracy of city officials subjecting him to unlawful discrimination in regularly and deliberately denying his applications (Burt v. New York) CA2 NY, 1946) 156 F. 2nd 791).

It has also been held that rights arising under other federal statutes, including other federal civil rights statutes, are protectable in actions under Subsection (3) of 42 U.S.Code, Section 1985. The petitioner sufficiently alleged that the actions of the defendants, and each of them deprived not only federally guaranteed rights under the United States Constitution, but also deprived the plaintiff of his rights under the federally enacted provisions of the Landrum-

Griffin Act, that being 29 U.S. Code, Section 401 et seq.

The respondents have continually set forth a common practice and procedure of discriminating against certain persons either in a union, or in gaining access to the same. This discrimination has been against any and all persons who have run for elective office in the union against incumbent officers, or imposed them in any way or manner. As a member of this class, plaintiff was entitled to the protection of 42 U.S. Code, Section 1985 (3) and Section 1986.

In support of the petitioner's allegation that he was a member of a discriminated against class, he refers the Court to the case of Local Number 1 (ACA), Broadcast Employees of the International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers of America, et al., v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, et al (1976), 419 F. Supp. 263, a case wherein a local union and some of its officers brought action against the international union and its officers, and a second local union to prevent merger of the plaintiff local into the other local union. In that particular case, the plaintiff's principal thrust of their Complaint and argument was based upon the allegation that even if the international union had possessed and properly exercised the power to order the merger, its employment in the circumstances of the case was an act of unlawful retaliation by the international union's general president, general executive board and other

persons. The plaintiffs contended that the retaliation was for refusal to join the international union in support of President Nixon for reelection, and for the president's support of former international president, James R. Hoffa, evidenced by the joinder of the plaintiff as a party plaintiff in the case of Hoffa, et al., v. Sexby, et al. in the United States District Court for the District of Columbia.

In that case, the plaintiffs based their cause of action on, among other things, the provisions of the Labor Management Reporting and Disclosure Act of 1959 (29 U.S. Code, Sections 401, et seq.) and also the provisions of 42 U.S. Code, Section 1985.

The Court in that case, in holding that the plaintiff has stated a claim under the provisions of 42

U. S. Code, Section 1985 against the defendant union, stated:

". . .

"Count two of the (1st) Amended Complaint charges in paragraph 32 that the:

'Actions of the defendants in ordering a merger of Local 1 and Local 107 is (Sic) an unlawful conspiracy in violation of the 1st and 14th Amendments of the United States Constitution, 42 U. S. Code, Section 1985, and was done (Sic) with the purpose and intention of depriving plaintiffs of their rights to express views and positions contrary to those of the 'leadership' of IBT.'

"We believe this paragraph and other affirmants to which it refers adequate to plead a cause of action under either Section 1985 (2) or Section 1985 (3)." At Page 75.

The allegations contained in Local Number 1 (ACA), etc., v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers

of America, et al (supra) are very similar to the allegations contained in the petitioner's Complaint. Similarities in the two cases is apparent, and the allegation of a "class" sufficent to state a cause of action under 1985 (3) is adequately stated in both cases. The Court in the above cited case did state that the plaintiffs adequately stated a cause of action under the provisions of 42 U.S. Code, Section 1985 and the matter was not dismissed. The allegations contained in the petitioner's Complaint in the present cause are very similar to, and in many respects even more specifically and adequately state a claim for which relief can be granted. A class of persons to which the petitioner refers is an invidious

class subject to rights protectable under provisions of 42 U.S. Code, Sections 1985.

The Court, in Local Number 1 (ACA), etc., v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, et al (supra) went on to say:

> "In general terms, Section 1985 (3) of Title 42 creates a cause of action in favor of any person who is a victim of a conspiracy, motivated by invidious discrimination, to deprive him of rights secured to him by a Federal statute or constitutional provision against deprivation by the defendant sued Cohen v. Illinois Institute of Technology, 524 F. 2nd 818, 827-830 (7th Cir. 1975) (Stephens, J) cert. denied, 425 U.S. 943, 96 S. Ct. 1683 __ 187 (1976); Mc Lellan v. Mississippi Power and Light Company 526 F. 2nd 870 (5th Cir. 1976); Lopez v. Arrowhead Ranches 523 F. 2nd 924 (9th Cir. 1975); Milner v. National School of

Health Technology, 409 F. Supp. 1389, 1394-95 (E.D. Pa. 1976). See General v. Breckinridge 403 U.S. 88, 91 S. Ct. 1790, 29 L. Ed. 2nd 338 (1971); Phillips v. Trello 502 F. 2nd 1000, 1004-05 (3rd Cr. 1974); Richardson v. Miller, 446 F. 2nd 1247 (3rd Cir. 1971); Pennsylvania v. Local 542, International Union of Operating Engineers, 347 F. Supp. 268 (E.D. Pa. 1972).

". . .

"We think the affirmants of paragraph 32 claim a conspiratorial deprivation in violation of Section 1985 (3), of the 'right to express views and possessions contrary to those of the 'leadership' of BIT, not merely as an example of a First Amendment right, but as a separate right at which the alleged conspiracy was aimed. We reached this conclusion because: (1) As the Supreme Court made clear in Letter Carriers (supra), free speech may be protected in the labor contacts by statute, independent of the First Amendment; and (2) there is a Federal Statute protecting such speech applicable in this case, i.e. Labors Bill of Rights, Section 101 of the Labor Management Reporting and Disclosure Act. See part III B, supra. The

Federally protected right element of a Section 1985 (3) claim is thus satisfied here. See Milner v. National School (supra), in which Chief Judge Lord upheld a Section 1985 (3) complaint on the basis that it charged an invidious conspiracy to invade rights protected by Title 7 of the Civil Rights Act. 409 F. Supp. at 1395.

"The other elements required to state a Section 1985 (3) claim are a conspiracy and an invidiously discriminatory animus. Both are satisfied . . . as we read the case law it would appear that, in equal protection terms, a distinction is 'invidious' and thus unlawful if it adversely effects a traditionally disadvantaged group of 'suspect' lines, is insufficiently 'rational' in light of the respected interest of each party, or unnecessarily burdens the exercise of a 'fundamental' right. Free speech is clearly fundamental to the national labor policy. Discriminatory action of a labor organization motiviated by the content of the speech would thus seem well within the Griffin rationale. . ., thus Count II alleges all the elements of a Section 1985 (3) claim." (our emphasis)

Under the ruling of Local Number 1, etc., (supra), a Section 1985 claim can be stated against a local labor union and its officers for the same reason set forth in petitioner's Complaint. This leaves the Court with another dilema. Not only must the Court accept certiorari in order to determine whether the plaintiff's membership in a class of persons was sufficient to jurisdiction under 42 U.S. Code, Section 1985, but it must also grant certiorari in order to resolve conflicts and principal and holdings among lower courts in regards to such actions under 42 U.S. Code, Section 1985 against labor unions.

IV.

THE COURT SHOULD ACCEPT AND GRANT CERTIORARI TO DETERMINE WHETHER THE REQUIREMENTS OF MEMBERSHIP BEING MET UNDER THE PROVISIONS OF 29 U.S.C. SECTION 402(o) IS A QUESTION OF FACT OR A QUESTION OF LAW

The United States District Court, Southern District of Indiana, Indianapolis Division, granted the defendant's Motion to Dismiss for lack of subject matter jurisdiction, prior to any evidentiary hearing regarding the issue as to whether the requirements of membership were met under the provisions of 29 U.S.C. Section 402(o).

In essence, the Court below determined that as a question of law, such requirements were not met by the plaintiff (petitioner herein) in this particular case. This determination was made without hearing on the matter,

without the opportunity to present evidence by the petitioner as to the past practice and procedure and custom of the local union regarding requirements for membership, and was made summarily without such issue being resolved or heard by the Court.

Petitioner contends that this particular issue is a question of fact, to be determined by the trier of fact upon evidence and other matters presented to the Court. The issue as to what requirements actually exist for membership in any particular local union is a question of fact in itself. The Court's decision herein, assumes that the bylaws as set forth are accorded with in all instances, and followed to the letter regarding the requirements for membership. Petitioner contends

that each local union can, through its practice, custom and procedure, alter, amend, or modify the bylaws and requirements for membership to suit their particular needs. Therefore, what the requirements actually are is a question of fact for the Court, and is not subject to summary dismissal for failure to state a claim. It seems infeasible for the Court to determine that the petitioner failed to state a claim upon which relief can be granted based upon him not being a member of the union, and therefore his claim under provisions of the Labor Management Reporting and Disclosure Act having failed, when the Court failed to determine what those requirements were, or failed to determine through a fact finding hearing whether such requirements had been met. The Court took as law the fact that certain

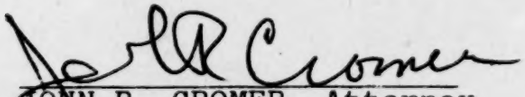
requirements are set out in the local union bylaws, and held basically that these requirements are the requirements for membership in the local union. In addition, the Court then took as law and as fact, the statement by the defendant that these requirements were not met by the plaintiff in the cause below. The Court's failure to hold a fact finding hearing for determination as to what the requirements were and whether they were met by petitioner is an error, and certiorari should be granted by the Supreme Court in order to determine whether the question of what requirements are, and the question of whether requirements had been met under provisions of 29 U.S.C. Section 402(o) is a question of law, which the Court may summarily decide without the hearing of particular

evidence, or a question of fact, applicable to each particular circumstance and case which the Court may not summarily decide, without hearing evidence on such fact and the issue.

CONCLUSION

WHEREFORE, petitioner respectfully prays that a Writ of Certiorari be granted.

Respectfully submitted,



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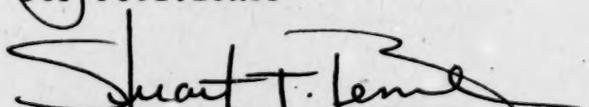

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APPENDIXES

APPENDIX A

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

DONALD G. DAVIS IP 78-683-C

vs.

INTERNATIONAL UNION OF CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN & HELPERS, LOCAL UNION NO. 135, LORAN W. ROBBINS, President of International Union of Chauffeurs, Teamsters, Warehousemen & Helpers, Local Union No. 135; and LORAN W. ROBBINS, Individually

O R D E R

This cause comes before the Court upon the defendants' motion to dismiss pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure, their motion for summary judgment pursuant to Rule 56 of those same rules, their petition for attorney fees and the plaintiff's motion for an exten-

sion of time to file additional materials which will be more properly deemed a request for leave to file such materials in contravention of Local Rule 8 of this Court.

The Court, having reviewed the motion, the briefs and the materials filed in support thereof and in opposition thereto, and the complaint, and now being duly advised in the premises, hereby GRANTS the motion to dismiss for lack of subject matter jurisdiction, necessitating DENIAL of all other motions, and DISMISSES the action.

IT IS SO ORDERED.

DATED this (11th day of January,) 1979.

(James E. Noland)
JAMES E. NOLDAND, U. S.
District Judge

MEMORANDUM ENTRY

This cause seeks substantial money damages and injunctive relief against a union of which the plaintiff was once a member and its President for alleged interference with his rights as a union member. The plaintiff has asserted twelve individual grounds for this Court's jurisdiction but because none of these grounds is sustainable the complaint must be dismissed for lack of subject matter jurisdiction. Because the complaint and pleadings filed to date adequately show the law and facts sustaining this motion, the plaintiff's request for leave to file additional materials is denied as is the defendants' request for attorney fees. The plaintiff asserts jurisdiction under 21 U.S.C.

§§1331, 1337 and 1343 but these statutes only provide such jurisdiction if an underlying federal constitutional or statutory right is shown. The plaintiff alleges several such claims which the Court will review individually.

Constitutional Claims

The plaintiff claims that the defendants have violated his constitutional rights guaranteed by the first, ninth and fourteenth amendments to the Constitution. These amendments are clearly aimed at the limitation of government action affecting individuals. The only way in which plaintiff can assert a claim against these defendants under these constitutional provisions is to equate them with the government in some way. Here plaintiff asserts the extensive regulation of union activities constitutes sufficient

involvement by the government to provide the required government action. This argument was made and rejected in Driscoll v. International Union of Operating Engineers, 484 F.2d 682 (7th Cir. 1973), a case factually similar to the cause now before the Court. There is no allegation or demonstration that the government regulation which obviously exists here in any way encourages the specific course of conduct about which this plaintiff complains. For these reasons no federal constitutional claim is raised by the plaintiff's complaint.

42 U.S.C. §1983

The plaintiff claims the defendants have violated his federal rights acting under color of state law. No allegation in the complaint supports this claim and no showing has been made of

the state law to which the plaintiff refers. For these reasons the Court lacks jurisdiction to resolve the plaintiff's §1983 allegation.

42 U.S.C. §§1985(3) and 1986

The plaintiff claims that the defendants have violated his federally created rights under 42 U.S.C. §1985. In review of this statute the Supreme Court stated:

> It is thus evident that all indicators - text, companion provisions, and legislative history- point unwaveringly to §1985(3)'s coverage of private conspiracies. That the statute was meant to reach private action does not, however, mean that it was intended to apply to all tortuous, conspiratorial interfernce with the rights of others. For, though the supporters of the legislation insisted on coverage of private conspiracies, they were equally emphatic that they did not believe, in the words of Representative Cook, "that Congress has a right to punish an assault and battery when committed by two or more persons within a State." . . . The

> constitutional shoals which would like in the path of interpreting §1985(3) as a general federal tort law can be avoided by giving full effect to the congressional purpose - by requiring, as an element of the cause of action, the kind of invidiously discriminatory motivation stressed by the sponsors of the limiting amendment. . . . The language requiring intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators action. Griffin v. Breckenridge, 403 U.S. 88, 101, 102 (1971).

This language, which could hardly be more clear, necessitates an allegation that the plaintiff is being singled out as the member of some class of individuals for special treatment by these defendants. No such allegation is made nor does one appear to be supportable. The Seventh Circuit Court of Appeals has consistently followed Griffin, Lesser v. Braniff Airways, Inc.,

518 F.2d 538 (1975), and questioned the availability of a class claim based upon non-union membership. Murphy v. Mount Carmel High School, 543 F. 2d 1189, 1192 n. 1(1976). For these reasons the plaintiff has failed to allege a cause of action under §1985 and, because §1986 is tied to that section, no claim is alleged thereunder.

Norris-LaGuardia Act

The plaintiff claims this Court may enter an injunction in this case pursuant to 29 U.S.C. §107. This section, and all of Chapter 6 of Title 29 of which it is a part, is not a grant of jurisdiction to this Court but rather is a limitation upon this Court's exercise of the jurisdiction established by other statutes.

> The Norris-LaGuardia Act . . . was designed primarily to protect working men in the exercise of organized, economic power, which is vital to collective bargaining. The Act aimed to correct existing abuses of the injunctive remedy in labor disputes. Brotherhood of Railroad Trainmen v. Chicago River and Indiana Co., 353 U.S. 40 (1957).

This position was reemphasized in Chicago & North Western Ry. Co. v. United Transportation Union, 402 U.S. 570 (1971). If the plaintiff should demonstrate jurisdiction pursuant to some other federal statute then the question of whether the Norris-LaGuardia Act limits this Court's power to act in this instance must be resolved, but the Act itself fails to provide this Court with jurisdiction.

Labor Management Relations Act

The plaintiff claims his rights under the Labor Management Relations Act have been violated and that this

Court thus acquires jurisdiction under the Act. He cites sections 141, 158 and 187 to support this position; however, §141 is simply the statement of congressional purpose which itself provides no grounds for jurisdiction. Section 158 merely defines what actions shall be deemed to be unfair labor practices. Again this section itself does not provide jurisdiction to this Court. Finally, the plaintiff cites §187 which provides jurisdiction over unfair labor practices specifically defined in §158(b)(4), however, none of the plaintiff's allegations assert an unfair practice as defined by that subsection.

Though the plaintiff does not cite §160 that is the section of the Act which provides for the prevention of the unfair labor practices as defined by

the Act. With the exception of §187, however, the courts have determined that the National Labor Relations Board has exclusive jurisdiction over the prevention of these practices. Garner v. Teamsters, Chauffeurs and Helpers Local Union No. 776, 346 U.S. 485 (1953); Anson v. Hiram Walker & Sons, 222 F.2d 100 (7th Cir. 1955). For these reasons this Court has no jurisdiction to resolve the plaintiff's Labor Management Relations Act claims.

Labor Management Reporting and Disclosure Act.

Finally, the plaintiff claims his rights to union membership and to run for union office under the Labor Management Reporting and Disclosure Act have been violated. This is the

most likely source of jurisdiction in this dispute between a union and one of its former members; but the status of the plaintiff as a former member is fatal to his claim of jurisdiction. Section 402(a) states:

> "Member" or "member in good standing", when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

On May 27, 1977, the plaintiff waived and released any claim to membership in the defendant union as part of a settlement of a previous lawsuit in this Court. This waiver is clear on its face and as a matter of law ended

the plaintiff's affiliation with this union. No allegation in the complaint challenges the propriety of this settlement.

In light of this resignation the plaintiff has no rights under the Act unless he has rejoined the union. He alleges he has taken all the steps necessary to rejoin but that the union has refused to accept him as a member. Pursuant to the constitution and by laws of the union this acceptance is required before one can become a member of the union. In Gavin v. Structural Iron Workers Local No. 1, 553 F.2d 28 (7th Cir. 1977), the Court upheld the District Court's dismissal in a case factually similar to the one now before this Court. There is no impropriety in the union's reservation

of the right to reject this plaintiff's application and having done so the plaintiff cannot avail himself of the remedies contained in the LMRDA. For these reasons the Court lacks jurisdiction to resolve the plaintiff's claims under the LMRDA.

Having found no cognizable federal claims in theplaintiff's allegations, the Court has no subject matter jurisdiction in this cause and must dismiss the plaintiff's claims under state law as well. Mine Workers v. Gibbs, 383 U.S. 715 (1966).

APPENDIX B

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

NO. IP 78-683-C

DONALD G. DAVIS)
)
vs.)
)
INTERNATIONAL UNION OF CHAUFFEURS,)
TEAMSTERS, WAREHOUSEMEN & HELPERS)
LOCAL UNION NO. 135, et al)

O R D E R

This cause comes before the Court upon the plaintiff's motions to reconsider this Court's prior order, to alter or amend the summary judgment entered pursuant to that order, for relief from that judgment and a new trial, and for leave to file an amended complaint.

The Court, having considered the motions, the brief and affidavits filed in support thereof and the brief

filed in opposition thereto, and now being duly advised in the premises, hereby DENIES the motions since the plaintiff has made no showing of new information which would justify any alteration of this Court's prior action.

IT IS SO ORDERED.

DATED this (11th day of April), 1979.

(James E. Noland)
JAMES E. NOLAND, U.S.
District Judge

APPENDIX C

Unpublished Per Curiam Order

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

November 28, 1979

Before

Hon. THOMAS E. FAIRCHILD, Chief Judge

Hon. JOHN M. WISDOM, Senior Circuit Judge*

Hon. ROBERT A. SPRECHER, Circuit Judge

DONALD G. DAVIS, Plaintiff-Appellant,	)	
	)	Appeal from
	)	the United
No. 79-1473 vs.	)	States
	)	District
INTERNATIONAL UNION OF	)	Court for
CHAUFFEURS, TEAMSTERS,	)	the Southern
WAREHOUSEMEN AND HELPERS,	)	District of
LOCAL NO. 135, et al.,	)	Indiana,
Defendants-Appellees.	)	Indianapolis,
		Division
		No. IP78-C-683
		JAMES E. NOLAND, Judge

This cause came on to be heard on the transcript of the record from the United States District Court for the

Southern District of Indiana, Indianapolis Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the order of this court entered this date.

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*Senior Circuit Judge John M. Wisdom of the United States Court of Appeals for the Fifth Circuit is sitting by designation.

APPENDIX D

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1979

NUMBER A-658

DONALD G. DAVIS,
Petitioner

-vs-

INTERNATIONAL UNION OF CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN AND HELPERS, LOCAL 135; LORAN W. ROBBINS, PRESIDENT OF INTERNATIONAL UNION OF CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN AND HELPERS, LOCAL 135; and LORAN W. ROBBINS, Individually,
Respondents.

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI

TO: Mr. Justice Stevens,
Associate Justice of the
Supreme Court of the United
States and Circuit Justice for
the Seventh Circuit

Pursuant to Title 28, United States Code, Section 2101 (c) and Rule 22, of the Rules of the

Supreme Court of the United States, application is hereby made for an extension of time within which to file a Petition for Writ of Certiorari from February 26, 1980, to and including March 30, 1980.

1. The judgment sought to be reviewed is that of the United States Court of Appeals for the Seventh Circuit, in the case entitled Donald G. Davis v. International Union of Chauffeurs, Teamsters, Warehousemen and Helpers, Local 135; Loran W. Robbins, President of International Union of Chauffeurs, Teamsters, Warehousemen and Helpers, Local 135; and Loran W. Robbins, Individually, Seventh Circuit Cause Number, 79-1473; United States District Court, Southern District of Indiana, Indianapolis Division, Cause Number IP 78-683-C.

2. The judgment sought to be reviewed was entered on the 28th day of November, 1979. The time allotted by law for filing a Petition for Writ of Certiorari will expire on or about the 26th day of February, 1980.

3. That the judgment of the United States Court of Appeals for the Seventh Circuit disposed of this matter by affirming the decision of the United States District Court, Southern District of Indiana, Indianapolis Division, which granted respondent's (defendant below) Motion to Dismiss under provisions of 12B6, of the Federal Rules of Civil Procedure. A copy of the opinion of the Court below is appended hereto and not reported.

4. The jurisdiction of this Court is invoked under the provisions of Title 28, United States Code,

Section 1254, wherein it is provided:

> "SECTION 1254. COURTS OF APPEALS; CERTIORARI; APPEAL; CERTIFIED QUESTIONS.
>
> "Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By Writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
>
> ". . ."

5. That this case involves the following questions based upon the foregoing statutes of the United States, and generally, grounds on which certiorari will be sought are:

A. Question: Is petitioner a "member" of defendant local union under provisions of the Labor Management Reporting and Disclosure Act, more particularly, 29 U.S.C. Section 402(o).

B. Question: Can "formal acceptance" in itself be a prerequisite for acceptance relating to membership as relating to 29 U.S.C. Section 402(o).

C. Question: Whether the purpose and intent of Congress in the enactment of the Labor Management Reporting and Disclosure Act as set forth in 29 U.S.C. Section 401 et seq., is served by the findings of the United States District Court, Southern District of Indiana, Indianapolis Division, and the affirming of that decision by the United States Court of Appeals for the Seventh Circuit.

D. Question: Whether the petitioner's compliance with all normal requirements of membership

within said union was sufficient to entitle to him to standing regarding "membership rights" under the provisions of the Labor Management Reporting and Disclosure Act, pursuant to 29 U.S.C. Section 402(o); and whether the Trial Court and Appellate Court can go beyond the bylaws and constitution of said international union or its local union and look to, and rely upon common custom, practice and procedure to determine the requirements for membership in order to confer rights under provisions of the Labor Management Reporting and Disclosure Act, and secure those rights pursuant to 29 U.S.C. Section 402(o).

E. Question: Whether a class of individuals as set forth in petitioner's

Amended Complaint, that being persons who have run for elective office or attempted to run for elective office or to impose incumbent candidates, is a "class" of persons sufficient to grant the Court jurisdiction under the provisions of 49 U.S.C. Section 1985 and 42 U.S.C. Section 1986.

F. Question: Whether the question as to whether membership qualifications have been met, and the requirements for membership qualifications under the provisions of 29 U.S.C. Section 402(o) is in itself a question of fact or a question of law. In addition, whether the Trial Court must consider the past practice, conduct and custom when determining whether the "requirements" under Section 29 U.S.C. Section 402(o) have been met, and whether the Court,

therefore, has jurisdiction to grant judgment under the provisions of Rule 12B6 of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction.

GENERAL STATEMENT OF THE CASE

Your petitioner (plaintiff below), Donald G. Davis, appeared at Local Union Number 135, of the International Union of Chauffeurs, Teamsters, Warehousemen and Helpers, and presented thereto a completed application form and payment for all membership dues, assessments, late fees, and other matters to said local union. The person who was to accept said card and money, then informed Mr. Davis the union could not accept "his" membership application, and that he would have to see "Robbins" (president of the local) personally. Your petitioner was informed that under no circumstances would the union accept "his" money or application.

A suit was thereafter filed, and your petitioner showed to the Court that the past practice, custom and procedure of the local union

in application and membership was merely to accept the application card and payment of dues, and no further formal requirements were necessary. Affidavits to the Court indicated conclusively that the common procedure for admission into the union was simply working at a union shop, thereafter, a business agent of the local or other union representative would appear, and extract $5.00 per day until dues were paid. At that time, the business agent would then return handing you your union card. At no time were other members required to go through formal acceptance procedures, be voted upon by the full board, or even appear at the union hall. Based upon these affidavits and this evidence, petitioner contended that he had met all requirements for membership, and therefore was entitled to standing to sue under the provisions of 29 U.S.C. Section 402(o).

6. This extension is requested because the applicant is unable to file a timely petition because of additional time needed for research and development of the petition itself,

and the heavy trial schedule of your petitioner's counsels, John R. Cromer, 431 East Hanna Avenue, Indianapolis, Indiana, and Stuart T. Bench, 431 East Hanna Avenue, Indianapolis, Indiana. That in addition, as this is a novel question of law for the United States Supreme Court, full briefing of the issues and arguments proposed are needed in order to properly inform the Court. For this reason, additional time is needed in order to prepare the same. In addition, in order to comply completely with the Supreme Court Rules, this matter must be printed and typed according to the provisions of these rules, and drafts of the same will not be prepared and ready for filing from the printers until after the date

petition is due under provisions of the Supreme Court rules. That your petitioner contends that this extension of time will in no way prejudice the respondent, nor delay justice to them, in that your petitioner since the time of his denial of application has not been a member of said union, and has not received the rights and benefits thereon.

WHEREFORE, it is respectfully requested that the time within which to Petition for Writ of Certiorari herein be extended to and including the 30th day of March, 1980.

(JOHN R. CROMER)
JOHN R. CROMER, Attorney
for Petitioner

Date: 1-29-80

Subscribed and sworn to before me this 29th day of January, 1980.

My Commission Expires:
8-24-81
Resident Marion County

(STUART T. BENCH)
STUART T. BENCH,
Notary Public

Attached to Appendix D was a copy of the opinion of the United States Court of Appeals for the Seventh Circuit. For a copy of this, see Appendix C

APPENDIX E

SUPREME COURT OF THE UNITED STATES

No. A-658

DONALD G. DAVIS,
Petitioner

v.

INTERNATIONAL UNION OF CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN AND HELPERS, LOCAL 135, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 30, 1980.

/s/ John Paul Stevens
Associate Justice of
the Supreme Court of
the United States

Dated this 7

day of February, 1980.